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Commercial Law: Control of Price

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Commercial Law

BANKRUPTCY

*Melvin G. Dakin**

A bankruptcy case on the docket of the Louisiana Supreme Court has been a comparative rarity in recent years. However, during the past term, in the case of *Emery & Kaufman, Ltd. v. Heyl*,¹ the issue was raised before the court as to whether a discharge in bankruptcy included a claim by a general insurance agent for unremitted premium balances against a bankrupt local agent. The claimant argued that the relationship was one of trust and hence specifically excepted from discharge by the Bankruptcy Act.²

While the court wavered a bit before doing so, on rehearing, it rejected the argument, based on a line of cases mainly in state courts, that the circumstances here created an express or technical trust.³ If there is to be an exception for this type of claim from the operation of a discharge in bankruptcy it will require action on the part of the Legislature specifically characterizing the relationship of general insurance agent and local agent as to premium remissions as one of trust.⁴ In the meantime the general agent remains subject to the same degree of risk as any other creditor with an ordinary dischargeable contract claim against the local agent. The court noted with approval that: "The mere reposing of confidence in a person with whom one has a commercial transaction does not create the fiduciary relation intended by the Bankruptcy Act."⁵

CONTROL OF PRICE

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In *McKinnis v. Scandaliato*⁶ an alternative federal cause of action under the Defense Production Act of 1950⁷ permitted

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1. 227 La. 616, 80 So.2d 95 (1955).

2. 52 STAT. 851 (1938), 11 U.S.C. § 17 (1952).

3. 227 La. 616, 633, 80 So.2d 95, 101 (1955).

4. *Ibid.*

5. *Id.* at 635, 80 So.2d at 102.

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6. 226 La. 881, 77 So.2d 522 (1955).

7. 64 STAT. 811 (1950), 50 U.S.C. App. § 2109(c) (1952).

a relatively easy disposition of a case which would otherwise have required consideration under Civil Code article 2529. The plaintiff sued for rescission of an automobile sale, or in the alternative a reduction in price, on the ground that it was held out to him as new when in fact it was used. As another alternative he sued for treble the amount of the excess over a ceiling price regulation as was his right under the price control provisions of the Defense Production Act of 1950.⁸ The trial court gave judgment for twice, rather than treble, the amount of the excess of the selling price over the federal ceiling price, which under the act it had discretion to do.⁹ The Supreme Court affirmed, finding no error in the trial court's determination that there had been a willful violation of the federal regulation.¹⁰

Throughout the case, incidentally, it was assumed that the federal cause of action stemmed from the Emergency Price Control Act of 1942,¹¹ which was repealed effective June 30, 1947.¹² Actually during 1952, when this sale took place, the statutes in effect were the price and wage stabilization provisions of the Defense Production Act of 1950,¹³ which provided the same cause of action for overcharges as contained in the 1942 legislation.

CORPORATIONS

*Dale E. Bennett**

RELIEF FOR MINORITY SHAREHOLDERS

*Darmana v. New Orleans Stock Yard*¹ provides a valuable guide to proper procedures for relief by minority shareholders who are seeking to prevent the draining off of corporate assets by way of unjustified executive salaries to the group in control. The first issue in the case related to the nature of the remedy. It was held that an injunction to prevent the further diversion and misappropriation of corporate funds would be a more appropriate remedy than a receivership. The Supreme Court had previously recognized the advantage of injunctive relief over the

8. *Ibid.*

9. 226 La. 881, 886, 77 So.2d 522, 523 (1955).

10. 64 STAT. 811 (1950), 50 U.S.C. § 2109(c) (1952).

11. 56 STAT. 34 (1942), 50 U.S.C. § 925(e) (Supp. 1944).

12. 60 STAT. 664 (1947), 50 U.S.C. App. § 966 (Supp. 1951).

13. 64 STAT. 811 (1950), 50 U.S.C. § 2109(c) (1952).

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1. 226 La. 897, 77 So.2d 528 (1954).